

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN DEREK MURPHY,
Petitioner

CIVIL ACTION
NO. 05-10548-JLT

v.

MICHAEL A. THOMPSON,
MCI SHIRLEY, SUPERINTENDENT
Respondent

PETITIONER'S ASSENTED-TO MOTION FOR
PERMISSION TO FILE CERTIFICATE OF APPEALABILITY
ON OR BEFORE SEPTEMBER 21, 2007

Now comes the petitioner in the above-entitled action and respectfully moves this Honorable Court pursuant to F.R.A.P. 22 and F.R.A.P. Local Rule 22.1 for permission to file his Certificate of Appealability in this case on or before September 21, 2007.

As grounds therefore, undersigned counsel states that she has a brief due in the Massachusetts Appeals Court on August 3rd in *Commonwealth v. James Burns*, Docket 07-P-876. In addition counsel is preparing a motion for a new trial based on newly discovered evidence which she expects to file in August in the case of *Commonwealth v. Deshaun Wright*, Docket SUCR 2003-10621. This case is currently pending before the Massachusetts Appeals Court under docket 06-P-0237 awaiting the Commonwealth's brief. Counsel has completed a draft of the supporting memorandum in this case and is in the middle of further research and revisions.

Counsel also submits the attached Affidavit of Counsel in support of this request.

Because of these other cases and vacations planned during the month of August, counsel needs additional time to

complete the certificate of appealability in this case. For these reasons, the petitioner is requesting that the Court allow him until September 21, 2007 to file the COA.

Pursuant to LR 7.1(A)(2) counsel for the petitioner certifies she resolved the above matter with A.A.G. Susanne Reardon, who has assented to this motion.

Respectfully submitted,

/s/ Angela G. Lehman
Angela G. Lehman, BBO 567411
P.O. Box 1527
Somerville, MA 02144
617-625-0807
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Date: July 24, 2007

CERTIFICATE OF SERVICE

I, Angela G. Lehman, do hereby certify that the PETITIONER'S ASSENTED-TO MOTION FOR PERMISSION TO FILE CERTIFICATE OF APPEALABILITY ON OR BEFORE SEPTEMBER 21, 2007 filed through the ECF system will be sent electronically in accordance with Local Rules 5.2(b) and 5.4 to AAG Susanne Reardon, Criminal Bureau, One Ashburton Place, Boston, MA 02108 on July 24, 2007 and by First Class mail to John Derek Murphy, #W68679, OCCC, 1 Administration Road, Bridgewater MA 02324-3230.

/s/ Angela G. Lehman
Angela G. Lehman

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AFFIDAVIT OF COUNSEL

I, Angela G. Lehman, do hereby swear that the following is true to the best of my knowledge and belief.

1. I am appointed counsel for the petitioner John Derek Murphy.

2. Since receiving notice of the District Court's decision to adopt the Report and Recommendations of Magistrate Judge Dein on June 28, 2007, I have been working on the brief in *Commonwealth v. James Burns*, Docket 07-P-876 which is due August 3, 2007, and a motion for a new trial based on newly discovered evidence in *Commonwealth v. Deshaun Wright*, Docket SUCR2003-10621.

3. I completed a brief in the Wright matter in May, 2007 and was given permission to proceed simultaneous with the motion for a new trial by the Mass. Appeals Court. I have completed a draft of the supporting memorandum in this case but need to do some further research and revisions before the motion is ready to be filed. I hope to file it in August, before the Commonwealth's brief is due in September, 2007.

4. I also have family vacation plans the first and third weeks of August as well as Labor Day weekend.

5. Because of my other cases and vacation plans, I am asking the Court's permission for leave to file the certificate of appealability in this case on or before September 21, 2007.

Signed under the pains and penalties of perjury this 24th day of July, 2007.

/s/ Angela G. Lehman

Angela G. Lehman